IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 34 OF 2003

Shri Orlando Louis
Da Lapa Soares,
Pilerne, Bardez, Goa. ... Applicant.

versus

STATE
through Central Bureau
of Investigation, A.C.B.,
Panaji. ... Respondent.

Mr. G. D. Kirtani, Advocate for the Applicant.

Mr. Joseph Vaz, Special Public Prosecutor for the State/Respondent.

CORAM: P. V. HARDAS, J.

DATED: 18TH SEPTEMBER, 2003.

ORAL JUDGMENT

The Applicant/Original Accused No.2, has filed this Criminal Revision Application being aggrieved by the Order of the Special Judge, North Goa, Panaji, dated 12th March, 2003, in Special Case No.4/1997, ordering the framing of the charge against the Applicant for an offence punishable under Sections 120-B and 420 of the Indian Penal Code r/w Section 20-A

of the Indian Telegraph Act, 1885.

2. The facts in brief as are germane for the decision of this application are set out hereunder:-

During the period from 15th December, 1994 to 21st September, 1995, it is alleged, that Original Accused No.1, who was working as a Sub-Divisional Engineer at E-10-B Telephone Exchange, Panaji, diverted spare telephone numbers 224493 and 224415 of the Telecom Department on telephone numbers 228931 and 228932 of the Goa Chamber of Commerce and Industry and caused loss of Rs.10,02,996/- to the Telecom Department. Original Accused No.3 had entered into an agreement with the Goa Chamber of Commerce and Industry for running a STD booth in the Telecom Centre which was established by the Goa Chamber of Commerce and Industry. The Applicant/Original Accused No.2 was the Secretary of the Goa Chamber of Commerce and Industry while one Caesar Dias(absconding Accused) was the main person who was running the STD booth, while Original Accused No.3 was a mere front. The prosecution has further alleged that all the Accused conspired together and in pursuance to the said conspiracy Accused No.1 diverted the two telephone numbers 224493 and 224415. These numbers were illegally created in the Computer and were found jumpered to tag to

corresponding telephone numbers 228931 and 228932 belonging to Goa Chamber of Commerce and Industry. As a result of this on the local telephone numbers STD/ISD facilities were extended and the billing of the illegally created spare numbers used to be suppressed and created alternatively during the first and fifteenth of every month.

3. The learned Special Judge, North Goa, Panaji, while considering the question of framing of the charge, as against the present Applicant found that prima facie an offence punishable under Sections 120-B and 420 of the Indian Penal Code and Section 20-A of the Indian Telegraph Act, 1885 was made out. The learned Special Judge, North Goa, Panaji, therefore, ordered the framing of the charge against the present Applicant for the aforestated offences.

4. A copy of the charge-sheet has been made available to me by the learned Counsel appearing on behalf of the Applicant. The learned Special Judge, North Goa, Panaji, has relied on the statement of one Auspicio Rodrigues who has stated that he learnt from the Secretary of the Goa Chamber of Commerce and Industry(present Applicant) that the quotation of Auspicio Rodrigues was the best available quotation and, therefore, the said Mr. Rodrigues was under an

impression that he would be chosen to run the Telecom centre. Auspicio Rodrigues has further stated that after a month, he went to check up and was informed by the Applicant that the contract was signed by another party. The learned Special Judge, North Goa, Panaji, has also relied on the statement of Suresh Narayan Agrawal who states that the Applicant has told him that if he was interested he could submit his proposal for starting a telephone booth and accordingly, the said Suresh Narayan Agrawal had submitted his proposal. The said witness has further stated that after about 15 days, he again met the Applicant who had told him that some party has offered Rs.75,000/- and thereupon, this witness had informed the Applicant that it was not possible for him to pay this amount and had also expressed his surprise as to how anyone could pay a high rent for a year.

5. The learned Special Judge, North Goa, Panaji, has relied on the statement of Sushma Khandeparkar who has stated that she was asked to work at Telecom Centre at Goa Chamber of Commerce and Industry and was told that she would be paid Rs.1000/- but in fact, was paid only Rs.800/-. She has stated about the four telephone lines, two of which were working as STD numbers and two lines were connected to the Fax machines. She has further stated that the daily transaction used to be

between Rs.3000/- to Rs.6000/-, out of which Rs.1000/- used to be deposited by Accused No.3, Piru Madkaikar with the Goa Chamber of Commerce and Industry and cash of Rs.2600/- used to be kept in a separate envelope to be taken by Caesar Dias, the Accused who is said to be absconding.

6. The learned Special Judge, North Goa, Panaji, also relied on Rubiana Ahmed Baig who was also working at the Telecom Centre and who has stated that at the instance of Caesar Dias, she had accompanied Accused No.3, Piru Madkaikar, to the Goa Chamber of Commerce and Industry and had signed as a witness on one agreement. She has further stated that she was again asked by the said Caesar Dias to accompany Accused No.3, Piru Madkaikar and sign an Indemnity Bond as a guarantor. She has further stated that she was aware that the contract for running the telephone booth which was in the name of Accused No.3, Piru Madkaikar, was actually run by Caesar Dias. She has also stated that Rs.1000/- used to be paid to Goa Chamber of Commerce and Industry and Rs.2000/- used to be kept separately for being paid to Caesar Dias. The learned Special Judge, North Goa, Panaji, has also relied upon the agreement which was executed by the Goa Chamber of Commerce and Industry with Accused No.3, Piru Madkaikar, for running the Telecom Centre on payment of

Rs.6250/- per month.

7. Mr. G. D. Kirtani, learned Counsel appearing on behalf of the Applicant, has also invited my attention to the statement of one Ramnath Govind who was the Member of Goa Chamber of Commerce and Industry. This witness has stated that the Telecom Centre was started and was given to the highest bidder Piru Madkaikar. Her application along with that of the other bidder was presented to him by the Applicant who was the Secretary. He further states that he approved the highest bidder. According to him, he had approved the contract with Accused No.3, Piru Madkaikar, as per the desire of the Managing Committee.

8. In respect of the payment of Rs.1000/- per day to the Goa Chamber of Commerce and Industry, the statement of Mrs. Christina, wife of Joseph Fernandes, is extremely relevant. According to her, she is working as an Accountant in the Goa Chamber of Commerce and has identified her handwriting on a register where the account of Accused No.3, Piru Madkaikar, is maintained. She has admitted of having accepted cash of Rs.1000/- from 18th February, 1995 to 28th February, 1995. She has also admitted of having accepted Rs.1000/- on behalf of the Goa Chamber of Commerce and Industry whenever the cashier was not present.

9. According to Mr. G. D. Kirtani, learned Counsel appearing on behalf of the Applicant, the material produced by the prosecution does not even raise a suspicion against the present Applicant in respect of his involvement in the offence alleged. There is no material on record to even prima facie establish that the Applicant had conspired with the other Accused towards the creation of the two illegal telephone numbers and thus causing loss of over Rs.10,00,000/- to the Telecom Department.

10. According to Mr. Joseph Vaz, learned Special Public Prosecutor appearing on behalf of the State/Respondent, the circumstance that the absconding Accused Caesar Dias, was acquainted with the present Applicant and the fact that after the detection of the offence, a communication was addressed to the Applicant which contained a detailed narration of the facts was not replied to by the Applicant. Thus, according to Mr. Vaz, learned Special Public Prosecutor appearing on behalf of the State/Respondent, the silence on the part of the Applicant post the detection of the crime is a pointer towards the fact that the Applicant was a Member of the conspiracy.

11. I have given my anxious consideration to the rival submissions and I have perused the statements and

the material produced by the Investigating Agency along with the charge-sheet. There is absolutely no material on record as against the present Applicant to infer that he had entered into conspiracy with the other Accused. It is true that the Applicant has executed the agreements. The said agreements have been executed by the Applicant in his capacity as Secretary of the Goa Chamber of Commerce and Industry. The previous business dealings which are alleged are between the absconding Accused Caesar Dias and the Goa Chamber of Commerce and Industry. Mere acquaintance or previous business dealings is not a circumstance which would lead the Court to draw an inference about the conspiracy. Mere silence of the Accused cannot be considered as an eloquent circumstance about his being a conspirator. There is no other circumstantial evidence on record, at least none which has been pointed out to me, which would indicate that the present Applicant had conspired with the other Accused. The payment of Rs.1000/- also has been duly accounted for by the statement of Christina, wife of Joseph Fernandes.

12. After giving my anxious consideration, I am of the opinion that there is no prima facie material to warrant the framing of the charge against the present

Applicant. The Applicant is, therefore, entitled to be discharged.

13. In the result, therefore, Criminal Revision Application is allowed. The Order of the learned Special Judge, North Goa, Panaji, dated 12th March, 2003, in so far as it relates to the present Applicant ordering the framing of the charge under Sections 120-B and 420 of the Indian Penal Code and Section 20-A of the Indian Telegraph Act, 1885 is hereby quashed and set aside.

P. V. HARDAS, J.

RD.